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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,561	03/11/2004	Chikara Sugai	KIN-15384	7778
40854	7590	10/07/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK LLP 4080 ERIE STREET WILLOUGHBY, OH 44094-7836			GUADALUPE, YARITZA	
		ART UNIT	PAPER NUMBER	2859

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/799,561	SUGAI ET AL.
	Examiner Yaritza Guadalupe McCall	Art Unit 2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

**REOPENING OF PROSECUTION –  
NEW GROUNDS OF REJECTION AFTER APPEAL**

1. In view of the Appeal Brief filed on July 29, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102 ( b ) as being anticipated by Rank (US 5,421,101).

With respect to claim 1, Rank discloses a displacement measuring instrument comprising an instrument body ( 18 ); a spindle ( 12 ) penetrating the instrument body and being slidably supported by the instrument body to be displaced ( See Column 2, lines 51 – 54 ); a lifting lever (15) manipulated from the outside to forcibly shifting the spindle (See Column 4, lines 29 – 31); a lever support ( 300 ) that supports an end of the lifting lever ( 15 ) opposite to a drive end of the lifting lever that is in contact with the spindle; and an engaging member ( bracket receiving lever support 300 ) provided on an outer circumference of the instrument body that detachably engages and supports the lever support, since it could be detached by removing the connecting screws.

With respect to the term “ detachably ” in claim 1 : the term “ detachably ” do not structurally distinguish the claimed invention from Rank. Furthermore, in a broad sense, any structure may be considered to be “ detachably ”, if so desired as long as the structure may be removed by any means, if so desired.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2 – 3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Rank ( US 5,421,101 ) in view of Stevenson ( US 5,450,909 ).

Rank discloses a displacement-measuring instrument as stated in paragraph 3 above.

Rank does not disclose the dovetail arrangement as stated in claim 2. Rank does not disclose the detachment stopper as stated in claim 3.

Regarding to claims 2 - 3 : Rank teaches a displacement measuring instrument comprising a lever support ( 300 )and engaging member ( bracket ) engaged to the instrument body ( 18 ) by means of a fastening mechanism, but fails to indicate the particular fastening mechanism being used. Stevenson discloses a device having a mounting assembly (16) having a dovetail arrangement including a support ( 54 ), a groove ( 56 ) formed on said support and a projection ( 52 ) formed on the engaging member ( 32 ) to be engaged with the groove, in order to removably secure the device in place during use and allow easy removal for safe storage from contaminants ( See Column 4, lines 32 – 34 ). Stevenson also discloses a detachment stopper (62) which helps in properly placing the apparatus at a desired location and which prevents the lever support from being detached from the engaging member when the lever support is engaged with the engaging member and is slid by a predetermined distance is provided on the engaging member. Therefore, it would have been within the scope of an ordinary skill in the art to modify the instrument disclosed by Rank by replacing the engaging member with a dovetail arrangement including a detachment stopper as taught by Stevenson in order to removably secure the device in place during use and allow easy removal for safe storage from contaminants ( See Column 4, lines 32 – 34 ) and since these are both well known fasteners that are both used alternatively to securely hold a structure to a surface.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rank ( US 5,421,101 ) in view of Onoda ( US 6,187,242 ).

Rank discloses a device as stated in paragraph 3 above.

Rank does not discloses the lever support made of a synthetic resin molding as stated in claim 4.

In regards to claim 4 : Rank discloses a device as stated above, having a lever support and an engaging member engaged by a dovetail arrangement, but fail to disclose the particular material used to make the support. Onoda discloses a method for molding connectors by using a primary and secondary synthetic molding process in order to obtain a hard, durable connector with enhanced yielding and high reliability ( See Column 2, lines 3 – 5 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a lever support made of a synthetic resin molding in order to obtain a hard, durable support with enhanced yielding and high reliability ( See Column 2, lines 3 – 5 ) and since the courts have held that the particular type of material used to make a support, absent any criticality, is only considered to be the use of a “ preferred ” or “ optimum ” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of

Applicant's apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960 ) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1 - 4 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



YGM  
October 6, 2005

Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859  
October 6, 2005